IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 105 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PATEL CHANDULAL LAXMANBHAI

Versus

STATE OF GUJARAT &. ANR.

Appearance:

MR KJ KAKKAD for Petitioner

MR KT DAVE ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR RC JANI for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 20/04/99

ORAL JUDGEMENT

Rule. Mr. K.T.Dave, learned APP for respondent no.1 and Mr. R.C.Jani, learned advocate for respondent no.2 waive the service of rule. The learned advocates of the parties urge to hear and dispose of this application today itself. The request is accepted. The application is taken on hand for hearing and disposal today itself.

2. In order to appreciate rival contentions, relevant facts may, in brief, be stated, shearing off unnecessary details. Against the petitioner, in the court of the learned Judicial Magistrate (First Class),

at Unza Criminal Cases being Criminal Case Nos. 482, 483, 634 and 635 of 1995 are filed alleging that on four occasions during the same year, the petitioner issued the cheques which were dishonoured when presented in the Bank. The complaints of the offence punishable under Sec. 138 of the Negotiable Instruments Act are therefore filed. The petitioner, filing the application Ex.57 in Criminal Case No.482 of 1995, urged the learned Judicial Magistrate, (First Class) to hear all the four cases together and dispose the same of by a common judgment. The learned Magistrate, keeping Sec.219 of Criminal Procedure Code, turned down the application holding that at a time not more than three offences occurring during the same year can be tried together. Being aggrieved by such order, rejecting the application Ex.57, the present revision application is filed.

3. In this case, four cases are filed relating to the offence of the same kind under Sec. 138 of the Negotiable Instruments Act. If the person is accused of more offences than one of the same kind committed within the space of 12 months, whether he can be charged with and tried at one trial consolidating the different cases against him is the point posed before me for consideration. As per Sec. 219, the offences of the same kind occurring within the same year can be charged together but the number thereof should not exceed three. The learned Magistrate has placed reliance on this provision and has turned down the application, but it appears that he has lost sight of Sec.218 of the Criminal Procedure Code. It provides that for every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately, but the proviso thereof permits the court where the accused by an application in writing so desires try together all or any number of the charges framed against such person, provided the Magistrate is of the opinion that to try together all the cases will not prejudice the accused. Sec. 218 thus permits the Magistrate to try together all or any number of the charges framed against the accused, despite Sec. 219 provided, of course, he is of the opinion that no prejudice is likely to cause to the accused. Conjoint reading of both the provisions shows that for every distinct offence, there should be a separate charge except in certain specified cases or referrd to in Secs. 219, 220, 221 & 223. This is necessary to ensure fair trial. It has however been provided that where the accused himself wants a joint trial or a joinder of charges, the court may allow the same albit the strict rules in other provisions. Sec. 218 is designed to give

relief to the accused, if the Rules regarding joinder of charges work injurious to his interest. Such provision was not there in old code. Whether Sec.219 is independent of Sec.218 or in any way is to be read along with Sec. 218 was the question that arose before this court in the case of SOMABHAI SHAMALBHAI PATEL & ORS v. STATE OF GUJARAT, 28(1) [1987(1)] G.L.R. 111. It is made clear that no doubt, the general rule is that for every offence, there should be a separate charge and a separate trial. Secs. 219 to 223 carve out exceptions to that rule. The learned Magistrate must, while considering an application given by the accused, see that there is no prejudice to the accused and would be a fair trial. It is also made clear that if the proviso to Sec.218 of Criminal Procedure Code, if held not applicable to Sec.219, the proviso would become infructuous inasmuch as inspite of the right given to the accused for making the application for a joint trial of all the offences would be frustrated because of Sec.219. Sec.219 therefore in no case curtails the operation of Sec.218. In this case, keeping above stated two provisions in mind, what is to be examined is whether by the joint trial, a prejudice is likely to be caused to the accused or not.

4. It may be noted that in this case, not the prosecution but the accused/petitioner has prayed for the joint trial. When he has, on the contrary, invited joint trial, it can be said that no prejudice is likely to be caused to him. The charges in all four cases are the same. The evidence to be led is virtually same, if not identical. The questions of law & facts are vertually same. Hence to avoid inconvenience to the parties,waste of time and conflecting judgments, it would on the contrary better, if all the four cases are tried together and copies of judgment are placed in other cases. The interest of accused -petitioner is not likely to be injured. In short, the petitioner is not likely to be prejudiced. When that is so, it would be expedient, if all the four cases initiated against the petitioner are tried together.

5. For the aforesaid reasons, the learned Magistrate has fallen into the error in passing the impugned order. The same is, therefore, required to be upset. In the result, this Revision Application is allowed. The order of the learned Judicial Magistrate (First Class), Unza passed on 27th January, 1999 below the application Ex.56 in Criminal Case No. 482 of 1995 refusing joint trial is hereby set aside. The application is allowed. The learned Judicial Magistrate (First Class), Unza is

directed to try all the above said four cases together and dispose the same of by rendering a common judgment and placing copy thereof in Record & Proceedings of other three cases. Rule accordingly made absolute.

(ccshah) -----